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10/605,343	09/23/2003	Glen E. Moore	68073-011	2342

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EXAMINER

SNIDER, THERESA T

ART UNIT PAPER NUMBER

1744

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/605,343	Applicant(s) MOORE ET AL.	
	Examiner Theresa T. Snider	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/23/2003</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 117(0051).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the clip(claim 36) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the

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drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

3. The disclosure is objected to because of the following informalities:

Exemplary of such:

Page 1, 0001, the status of the copending application should be updated.

0045, discloses '128' as being in figure 20 however figure 20 fails to have a '128'.

0051, discloses what is illustrated in figure 18, however figure 18 fails to correspond with what is being disclosed.

0053, '(now shown)' should be replaced with '(not shown)'.

0054, 'or by operated' should be replaced with 'or operated'.

Appropriate correction is required.

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Exemplary of such:

Claims 2-46, line 1, 'An' should be replaced with 'The'.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2, 9 and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kowalewski.

Kowalewski discloses a vacuum unit including a motor and a debris collection device (fig. 1, #22,70).

Kowalewski discloses a waste container separate from the debris collection device (fig. 1, #31).

Kowalewski discloses a transport mechanism supporting the vacuum unit and the waste container (fig. 1, #34,36).

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With respect to claim 2, Kowalewski discloses the transport mechanism defined as wheels (fig. 1, #36).

With respect to claim 9, Kowalewski discloses the vacuum unit including a power source for the motor (col. 3, lines 61-64).

With respect to claim 25, Kowalewski discloses the waste container supported by the vacuum unit (fig. 6, #31).

9. Claims 1-2, 9, 17, 28, 37 and 40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lofgren.

Lofgren discloses a vacuum unit including a motor and a debris collection device (fig. 3, #33,32).

Lofgren discloses a waste container separate from the debris collection device (fig. 1, #28).

Lofgren discloses a transport mechanism supporting the vacuum unit and the waste container (fig. 1, #21).

With respect to claim 2, Lofgren discloses the transport mechanism defined as wheels (fig. 1, #22).

With respect to claim 9, Lofgren discloses the vacuum unit including a power source for the motor (fig. 1, #80).

With respect to claim 17, Lofgren discloses the transporting mechanism including a generally horizontal bed (fig. 1, #21).

With respect to claim 28, Lofgren discloses vacuum attachments (fig. 1, #104,118,120).

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With respect to claim 37, Lofgren discloses a vacuum handle (fig. 1, #118).

With respect to claim 40, Lofgren discloses the vacuum unit including an intake port and an exhaust port (fig. 3, #50,45).

10. Claims 1-2, 4, 8-10, 12, 15, 17, 19, 28-29, 36, 40 and 42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Marsolais.

Marsolais discloses a vacuum unit including a motor and a debris collection device (fig. 1, #18,12).

Marsolais discloses a waste container separate from the debris collection device (fig. 1, #98).

Marsolais discloses a transport mechanism supporting the vacuum unit and the waste container (fig. 1, #24).

With respect to claim 2, Marsolais discloses the transport mechanism defined as wheels (fig. 1, #24).

With respect to claim 4, Marsolais discloses the transport mechanism removable from the vacuum unit (fig. 6, #12,30).

With respect to claim 8, Marsolais discloses the transport mechanism integrally formed with the waste container (fig. 1, #98).

With respect to claims 9-10, Marsolais discloses the vacuum unit including a power source for the motor including batteries (col. 3, lines 18-22).

With respect to claim 12, Marsolais discloses a battery storage (fig. 1, #82).

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With respect to claim 15, Marsolais discloses the battery storage within the transport mechanism (fig. 1, #82).

With respect to claim 17, Marsolais discloses the transport mechanism including a bed (fig. 1, #20).

With respect to claim 19, Marsolais discloses the waste container having an open upper end and a lower end having a bottom in engagement with the transport mechanism (fig. 1, #98).

With respect to claim 28, Marsolais discloses vacuum attachments (fig. 1, #14 and unnumbered nozzle).

With respect to claim 29, Marsolais discloses the waste container having an exterior surface for securing attachments (fig. 1, #104).

With respect to claim 36, Marsolais discloses a clip (fig. 1, #104).

With respect to claim 40, Marsolais discloses the vacuum unit having an intake port and an exhaust port (fig. 3, #14, col. 2, lines 52-53).

With respect to claim 42, Marsolais discloses a sub-transport mechanism (fig. 6, #76).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



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12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowalewski as applied to claim 1 above, and further in view of Cobb.

Kowalewski discloses a similar assembly however fails to disclose at least three casters.

Kowalewski discloses the assembly having two casters (fig. 1, #34, col. 2, line 14). Cobb discloses a transport mechanism for a portable cleaning assembly having at least three castors (col. 1, lines 53-54). It would have been obvious to one of ordinary skill in the art to provide at least three casters in Kowalewski, as disclosed in Cobb, to provide for a transport mechanism that can swivel to allow for better maneuvering across a surface.

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15. Claims 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsolais as applied to claim 1 above, and further in view of Cobb.

Marsolais discloses a similar assembly however fails to disclose at least three casters.

Marsolais discloses the assembly having at least three wheels (fig. 1, #24). Cobb discloses a transport mechanism for a portable cleaning assembly having at least three castors (col. 1, lines 53-54). It would have been obvious to one of ordinary skill in the art to replace the wheels of Marsolais with the casters of Cobb, to provide for a transport mechanism that can swivel to allow for better maneuvering across a surface.

16. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marsolais as applied to claim 10 above, and further in view of Moores, Jr. et al..

Marsolais discloses a similar assembly however fails to disclose a battery fan.

Moores, Jr. et al. discloses the use of a fan for cooling batteries (fig. 3, #72). It would have been obvious to one of ordinary skill in the art to provide the fan of Moores, Jr. et al. in Marsolais to prevent increased temperatures in the batteries to allow for optimum performance and battery life (col. 1, lines 27-42).

17. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marsolais as applied to claim 17 above, and further in view of Parent.

Marsolais discloses a similar assembly however fails to disclose the handle extending upwardly from the bed.

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Marsolais discloses the transport mechanism including a handle (fig. 1, #106). Parent discloses a transport mechanism having a handle that extends from a bed of the mechanism (fig. 6, #126). It would have been obvious to one of ordinary skill in the art to extend the handle of Marsolais from the bed of the transport mechanism to allow for the greatest leverage by a user to allow for the most effective pushing of the assembly across a surface.

18. Claims 32 and 35 rejected under 35 U.S.C. 103(a) as being unpatentable over Lofgren as applied to claim 1 above, and further in view of Bristol.

Lofgren discloses a similar assembly however fails to disclose a bladder.

Lofgren discloses containers for cleaning solutions (col. 2, lines 52-53). Bristol discloses the use of a bladder to store cleaning solutions (col. 10, lines 31-33). It would have been obvious to one of ordinary skill in the art to provide the bladder of Bristol in Lofgren to allow for storage of the solution in a more compact location because of its flexible sides, as opposed to a hard walled container.

With respect to claim 35, Bristol discloses a spray nozzle extending from the bladder (fig. 8, #100). It would have been obvious to one of ordinary skill in the art to provide the spray nozzle in Lofgren to allow for easy application of the solution to a surface.

19. Claims 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lofgren as applied to claim 37 above, and further in view of Werner et al..

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Lofgren discloses a similar assembly however fails to disclose the handle having a switch.

Lofgren discloses a power switch (fig. 1, #90). Werner et al. discloses a handle with a power switch thereon (fig. 1, #35). It would have been obvious to one of ordinary skill in the art to provide the switch of Lofgren on the handle, as disclosed in Werner et al., to allow for easier access by an operator during use.

With respect to claim 39, Lofgren discloses a power brush operated by a switch (fig. 1, #105, col. 5, lines 5-7). Werner et al. discloses the switch also operating a power brush (col. 5, lines 60-62).

### ***Double Patenting***

20. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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21. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 6,732,403. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 is fully encompassed by claim 12.

22. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,732,403 in view of Lofgren. Lofgren discloses a vacuum unit having a motor and debris collection device (fig. 3, #32,33). It would have been obvious to one of ordinary skill in the art that in order for something to be a 'vacuum unit' that applies a vacuum the unit would need to have an element to create the vacuum and an element to collect what is being vacuumed, as disclosed in Lofgren.

23. Claims 2-3 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2-3 of U.S. Patent No. 6,732,403 in view of Lofgren. Please refer to above reasoning.

#### ***Allowable Subject Matter***

24. Claims 5-7, 13-14, 16, 20-24, 26-27, 30-31, 33-34, 41, 43-46 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Andersson-Sason, Replogle, Dick and Fiegel et al. disclose a cleaning assembly with

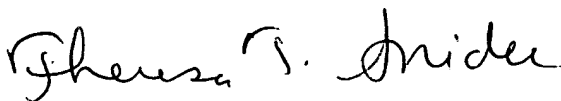
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a vacuum unit having a motor and debris collection device and a waste container. Robinson discloses a cleaning assembly having a vacuum unit with other functional cleaning devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa T. Snider whose telephone number is (571) 272-1277. The examiner can normally be reached on Monday-Thursday (5:30am-2:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Theresa T. Snider  
Primary Examiner  
Art Unit 1744

5/25/2006